

NOT INCLUDED  
IN BOUND VOLUMES

LBP  
Pottstown, PA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
GROSS SCHOOL BUS SERVICE, INC.

Employer

and

Case 4-RC-21631

INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS LOCAL 384

Petitioner

and

TEAM UNITED FRONT

Union Involved

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held January 22, 2010, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 65 for Teamsters Local 384, 52 for Team United Front, 2 against the participating labor organizations (neither), and 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, and adopts the hearing officer's findings<sup>1</sup> and recommendations,<sup>2</sup> and finds that a certification of representative should be issued.

The Employer's Objections 1, 2, and 6 allege as objectionable that members of an in-plant organizing committee (IPOC) recruited by the Petitioner engaged in voting-line conversations under *Milchem, Inc.*, 170 NLRB 362 (1968), and that IPOC members gathered and engaged in animated, prounion conversation with one another outside of, and at some undetermined distance away from, the trailer where the polls were located. We agree with the hearing officer's recommendations to overrule these objections.

For the reasons given by the hearing officer, we agree with her finding that members of the IPOC were not agents

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<sup>1</sup> The Employer has implicitly excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

<sup>2</sup> In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule the Employer's Objection 4, alleging that the Board agent failed to monitor and prevent improper conduct, and Objection 5, alleging that an Organizing Committee member promised to waive union dues for employees who joined Local 384 before the election.

of the Petitioner under applicable Board precedent. See, e.g., *Cornell Forge Co.*, 339 NLRB 733 (2003). We also agree with her finding that the IPOC members' conduct was not objectionable.<sup>3</sup>

Because this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, we also consider *NLRB v. L & J Equipment Co., Inc.*, 745 F.2d 224 (3d Cir. 1984), which set out a four-part test to determine whether members of an organizing committee are union agents.<sup>4</sup> We need not address steps one, two, or four

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<sup>3</sup> In recommending that Objections 1, 2, and 6 be overruled, the hearing officer evaluated the IPOC members' conduct under the third-party standard set forth in *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984) - namely, "whether the misconduct was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." The correct standard for evaluating objectionable electioneering by nonparties, however, is "'whether the conduct at issue so substantially impaired the employees' exercise of free choice as to require that the election be set aside.'" *Tyson Fresh Meats, Inc.*, 343 NLRB 1335, 1335 fn. 4 (2004) (quoting *Hollingsworth Mgmt. Service*, 342 NLRB 556, 558 (2004)). Applying the correct standard, we find no objectionable conduct.

<sup>4</sup> "1. The [committee] as a whole must possess actual or apparent authority to act on behalf of the union in assisting the union in the organizational drive or election campaign;

2. The individual member of the [committee] whose conduct is at issue must be sufficiently active in the [committee] that he or she had actual or apparent authority to act on behalf of the [committee].

3. The acts of the [committee] member must fall within the scope of his or her role as a member of the [committee].

because we find that the third condition for finding agency is not satisfied in this case. Step three asks whether the acts of the committee member "[fell] within the scope of his or her role as a member" of the organizing committee. *Id.* at 234.

As to the alleged *Milchem* conduct, most of it consisted of conversation that did not fall within the scope of the IPOC members' role as IPOC members. They simply chatted with coworkers about topics like cars and sports. So occupied, they were, and would have appeared to others to be, employees waiting in line to vote with other employees and passing the time while they waited.

One IPOC member, Linda Garner, did say to two friends waiting in line with her to vote that "the union's got to win here." Assuming that statement would meet step three of the *L & J Equipment* test, and further assuming that the other steps are also met, we would still uphold the election. The rule established in *Milchem*, above, applies only to "sustained conversations." 170 NLRB at 362. The Board made clear that application of the rule is to be "informed by a sense of realism," and that its decision did

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4. The union must not have taken adequate steps to repudiate acts which, although unauthorized, fall within the apparent authority of [committee] members." *Id.* at 234 (footnotes omitted).

not suggest "that any chance, isolated, innocuous comment or inquiry . . . will necessarily void the election." Id. at 363. Thus, even if Garner's comment fell "within the scope of . . . her role as a member of the [committee]," the remark to two coworkers was no more than an isolated comment insufficient to void the election.

Finally, looking at the gathering of the IPOC members away from the polls, we would find it unobjectionable even assuming the IPOC members' agency status. The credited evidence establishes that the gathered IPOC members were not engaged in electioneering. They were casually speaking to one another.

In sum, we would reach the same result here, even applying the Third Circuit's test.

#### CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for the International Brotherhood of Teamsters Local 384, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time bus drivers and bus aides employed by the Employer at its 1801 Pottstown Pike, Pottstown, Pennsylvania facility but excluding all dispatchers, managerial employees, guards and supervisors as defined in the Act, and all other employees.

Dated, Washington, D.C., September 14, 2010.

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Wilma B. Liebman, Chairman

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Craig Becker, Member

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Mark Gaston Pearce, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD